ABSTRACTS OF RECENT AMERICAN DECISIONS.

UNITED STATES DISTRICT AND CIRCUIT COURTS.[1]

SUPREME COURT OF INDIANA.[2]

COURT OF ERRORS AND APPEALS OF MARYLAND.[3]

COURT OF CHANCERY OF NEW JERSEY.[4]

SUPREME COURT OF NEW YORK.[5]

ACTION.

When Money voluntarily paid cannot be recovered.—During the period from July 1864, to March 1871, the P. Coal Co., paid to the C. and P. R. R. Co., a large sum of money as freight for transporting coal. Afterwards the Coal Co. sued the R. R. Co., in *indebitatus assumpsit* to recover back a portion of this freight, on the ground that the rate of freight charged the Coal Co. was illegal, in that it exceeded the rates paid by other shippers. *Held*, That the money having been voluntarily paid under no mistake of facts, and there being no circumstances of duress, fraud or extortion, the plaintiff was not entitled to recover: *Potomac Coal Co.* v. *C. & P. Railroad Co.*, 38 Md.

AGENT.

General and Special Agents.—A general agent is one who is authorized to transact all the business of his principal, or all his business of some particular kind, or at some particular place: *Cruzan* v. *Smith et al*, 41 Ind.

The principal is bound by the acts of a general agent, if the latter acted within the usual and ordinary scope of the business in which he was employed, notwithstanding he may have violated the private instructions which the principal may have given him; provided the person dealing with such agent was ignorant of such violation and of the fact that the agent exceeded his authority: *Id.*

The fact that the authority of an agent is limited to a particular business, does not make his agency special; it may be general in regard to that business, as though its range was unlimited: *Id.*

A special agent is one who is authorized to do one or more specified acts, in pursuance of particular instructions, or within restrictions necessarily implied from the act to be done: *Id.*

The principal is not bound by the acts of a special agent, if he exceeds the limits of his authority. And it is the duty of every person who deals with a special agent to ascertain the extent of the agent's authority, before dealing with him. If this be neglected, such person will deal at his peril, and the principal will not be bound by an act which exceeds the particular authority given: *Id.*

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[1] From J. H. Bissell, Esq., Reporter; to appear in Vol. 3 of his Reports.

[2] From J. B. Smith, Esq., Reporter; to appear in 41 Ind. Reports.

[3] From J. Shaaf Stockett, Esq., Reporter; to appear in 38 Md. Reports.

[4] From C. E. Green, Esq., to appear in Vol. 9 of his Reports.

[5] From Hon. O. L. Barbour, to appear in Vol. 65 of his Reports.

If a principal puts his agent in a condition to impose upon innocent third persons by apparently pursuing his authority, the principal will be bound by his acts, and he must lose in preference to such third persons: *Id.*

If one who is the general agent of another in the purchase of wheat, as such agent, buys wheat to be paid for on demand at the current price at the time of demand, his principal will be liable, though the principal may have instructed his agent to buy only for cash, and though the principal may have paid the agent for the wheat, if the contract be made in good faith, upon the credit of the principal, and without any knowledge of the private instructions of the principal: *Id.*

ATTORNEY. See *Sheriff.*

Suspension of—Partnership of.—The provisions of the statute for the suspension of an attorney from practice are penal in their nature, and should be strictly construed: *Klingensmith* v. *Kepler*, 41 Ind.

An attorney cannot be suspended from practice by the default of his partner in collecting and converting the money of a client without his knowledge or consent: *Id.*

BANKRUPTCY.

Right of the Assignee to sue in any District Court.—A suit may be maintained by an assignee in bankruptcy to collect the assets of the bankrupt in any other District Court than that where the proceedings in bankruptcy are pending: *Goodall, Assignee, etc.*, v. *Tuttle*, D. C. West. Dist. Wis., 3 Bissell.

The right of the assignee to sue in the other District Courts is not expressly conferred, but it may be held to be included in and implied from the grant "to collect the assets," as that power could not be otherwise made effectual: *Id.*

Jurisdiction over debtors of the bankrupt not being obtained by the bankruptcy proceedings, such power must, in order to give full effect thereto, necessarily be held to extend to any district where a suit to collect the assets is necessary: *Id.*

It must be held that Congress intended to provide for the complete administration of the bankruptcy system in the Federal courts, and as authority to entertain such suits is not given to the Circuit Courts, it must exist in the District Courts, or the jurisdiction be radically defective: *Id.*

The second section relates exclusively to the jurisdiction of the Circuit Courts under the act, and its provisions cannot, therefore, properly be referred to, to limit the jurisdiction of the District Court conferred by the first section: *Id.*

The rule that a legislature, by adopting a statute of another state, or re-enacting an old statute, is presumed to have adopted the judicial construction given thereto, considered, and authorities referred to. Cases under the Bankrupt Act of 1841 cited and approved: *Id.*

Congress not possessing the power to require or compel the state tribunals to entertain suits in favor of an assignee for the collection of the assets of the bankrupt, the courts should not construe the Bankrupt Act in such a manner as to necessitate in its execution assistance beyond the constitutional power of Congress to provide: *Id.*

Transfer of Promissory Notes.—The transfer of promissory notes by the payee during the pendency of bankruptcy proceedings against him upon which he was afterwards adjudged a bankrupt, and of an injunction restraining him from disposing of his property, vests no title in the purchaser, even though he had no actual notice of the bankruptcy proceedings: *In re Lake*, D. C. North. Dist. Ill., 3 Bissell.

All the world is bound to take notice of proceedings in bankruptcy, and the purchaser takes with constructive notice: *Id.*

Fifty per cent. Clause.—Since the amendment of July 27th 1868, a bankrupt is entitled to his discharge, without the assent of his creditors, if his gross assets equal 50 per cent. of the debts proved, without deducting costs or expenses: *In re Kahley*, D. C. West. Dist. Wis., 3 Bissell.

The intention of Congress in making this amendment clearly was to make the term assets as comprehensive as estate, and relieve the debtor from the costs and expenses of the proceedings.

Insurance Company—Appointment of Receiver—Act of Bankruptcy—State Proceedings no objection to Jurisdiction.—A fire insurance company is clearly within the scope and provisions of the bankrupt law: *In re The Merchants Insurance Co.*, D. C., North. Dist. Ill., 3 Bissell.

The appointment by a state court of a receiver to take possession of the property and assets of the corporation is "a taking on legal process" within the meaning of the thirty-ninth section of the bankrupt act: *Id.*

Though the proceedings in the state court may have been within its powers and jurisdiction, yet when the fact of bankruptcy intervenes the exclusive jurisdiction of this court attaches: *Id.*

When the corporation found itself insolvent, it should have at once filed a voluntary petition in bankruptcy, and failure so to do, and acquiescence in the proceedings against it by the state court, is itself an act of bankruptcy: *Id.*

The payment by the corporation, when actually insolvent, of the rent necessary to preserve a valuable lease, is an act of bankruptcy; and although such payment was judicious and made in good faith, and such an act as would have been authorized by this court, these facts do not change the character of the act under the law: *Id.*

Covenant to Insure.—A covenant in a mortgage to keep the mortgaged premises insured for the benefit of the mortgagee creates a specific equitable lien upon the insurance money, which is valid as against an assignee in bankruptcy: *In re The Sands Ale Brewing Company*, D. C., North. Dist. Ill., 3 Bissell.

The mortgage being recorded, the covenant acts upon the insurance as soon as effected, runs with the land, and is notice to creditors; and no subsequent assignment can affect the rights of the mortgagee. It is not necessary that the policies be specifically assigned, nor that the mortgagee select the companies. And any acts of the mortgagor without the consent of the mortgagee will not defeat the effect of the covenant: *Id.*

Homestead.—An insolvent merchant, having sold his homestead for cash, cannot, by moving his family into his store, hold that as his homestead, exempt: *In re Wright*, D. C., East. Dist. Wis., 3 Bissell.

Though his right to sell his homestead is undoubted, he cannot shift it, to the prejudice of his creditors: *Id.*

In such case the court will order a delivery of possession to the assignee: *Id.*

BILLS AND NOTES. See *Bankruptcy.*

CHATTEL MORTGAGE.

By Corporation—Acts of President and Secretary—Ultra Vires—Injunction.—Where under a contract with a corporation, chattels are furnished, and the corporation gives a mortgage upon the chattels, to secure the debt, in pretended compliance with the agreement, and the mortgagees suppose it was in actual and full compliance with it, a court of equity will not enjoin the mortgagees who have been put in rightful possession of the chattels under the mortgage from selling them, at the instance of a mere stockholder seeking to deprive the mortgagees of a lien to which they are equitably entitled as against him, on the ground that the corporation in executing the mortgage, acted *ultra vires: Amerman* v. *Wiles and others*, 9 C. E. Green.

The execution of a chattel mortgage by the president and secretary of a corporation, who were at the time owners of two-thirds of its stock, and its subsequent filing in the clerk's office of the proper county, is a substantial compliance with a statute requiring in order to the validity of a mortgage by a corporation, that the written assent of the stockholders owning at least two-thirds of the capital stock of such corporation, should be first filed in the office of the clerk of the county where the mortgaged premises are situated: *Id.*

COLLATERAL SECURITY. See *Debtor and Creditor.*

CRIMINAL LAW.

Confessions—Onus.—If the confession of the prisoner has been induced by any threat of harm, or promise of worldly advantage held out to him by the witness, or by his authority, or in his presence and with his sanction, it is inadmissible: *Nicholson* v. *State*, 38 Md.

Where the confession of a prisoner is offered in evidence, the *onus* is upon the prosecutor to show affirmatively that it was not made in consequence of an improper inducement, or was not obtained from the prisoner by improper means: *Id.*

When the confession of a prisoner on trial is offered against him, its admissibility in evidence must be determined by the Court and not by the jury: *Id.*

DEBTOR AND CREDITOR. See *Surety.*

Drafts of a third person—Collaterals.—When drafts of a third person or company received by a creditor, are not taken as payment, but simply to apply in payment of the debt, when collected, they can have no effect on the creditor's rights, so long as they remain unpaid, except to suspend his remedy until they become due: *Allen* v. *Clark et. al.*, 65 Barb.

They are to be deemed as taken simply as collateral; and the creditor has the right to prosecute them to judgment and execution without prejudice to his right afterwards to proceed against the principal debtor, so long as he fails to secure satisfaction: *Id.*

EQUITY. See *Chattel Mortgage; Nuisance; Partition; Trespass.*

EXECUTION.

Sale—Constable.—Personal property must be present and subject to the view of those attending a constable's sale. And the sale, in good faith, by a constable, of a hog, in a pen from one to two hundred rods from the place of sale, and entirely out of sight, is unauthorized: *Gaskill* v. *Aldrich*, 41 Ind.

FRAUD. See *Limitations.*

FRAUDS, STATUTE OF.

Agreement to Pay for Services with Land.—Although an agreement, by parol, to pay for services in land is void, and the person rendering the services may sue for and recover what such services are reasonably worth, yet this general rule is not without qualifications and exceptions: *Campbell* v. *Campbell*, 65 Barb.

The agreement is not corrupt, and therefore void. It is void only as to the land. That part of the agreement cannot be enforced; and hence, services which were rendered with a view to compensation would be left uncompensated, unless the law implied an agreement to pay for them what they were reasonably worth: *Id.*

When the contract is to pay in land for services, the party agreeing to convey must either have put it out of his power to do so. or refused to convey on tender to him of a deed: *Id.*

HOMESTEAD. See *Bankruptcy.*

HUSBAND AND WIFE.

Separate Estate of a Married Woman—Under Art. 45, sec. 2, of the Code, a married woman owning a separate real estate, may charge the same with the payment of a debt contracted by herself and husband, by their promissory note, in which they jointly and severally bind themselves, their separate and individual estates; and the only way to enforce the contract on the part of the wife, is to treat it as constituting an equitable lien or charge upon her separate estate, and upon failure to pay the debt, to decree the sale of the land for its satisfaction: *Hall & Hume* v. *Eccleston*, 38 Md.

A contract founded upon proper consideration, by which the husband and wife bind themselves to execute a mortgage of the separate estate of the wife, will be enforced by a Court of Equity, and such estate held liable for the debt intended to be secured: *Id.*

The separate estate of a married woman is liable in equity for all the debts, incumbrances, or other engagements which she, together with her husband, may by express terms, or clear implication, charge thereon: *Id.*

INJUNCTION. See *Chattel Mortgage; Nuisance; Trespass.*

LIMITATIONS, STATUTE OF. See *Trespass.*

Fraud—Conveyance treated as Mortgage.—Complaint against an administrator, alleging that a deed of conveyance of land to his decedent, absolute on its face, was a mortgage; that the decedent, as the attorney

of the plaintiff, was guilty of gross fraud and violation of duty in procuring his client, the plaintiff, to execute a deed instead of a mortgage to secure liabilities incurred by the attorney in becoming bail for him, and for fees due the attorney; and that, to defraud the plaintiff, the decedent had conveyed the land to another; and asking that the estate of the decedent pay to the plaintiff the value of the land, less the amount due from the plaintiff to the decedent on account of such liabilities and fees. The administrator answered that the cause of action did not accrue within six years next before the commencement of the action, and, also, that more than eighteen months elapsed after the death of the decedent before the action was commenced. *Held*, on demurrer to the answer, that whether the action was for relief against fraud, or to recover money, the answer was good: *Wallace* v. *Metzker*, 41 Ind.

MORTGAGE. See *Bankruptcy*.

Usury—Payment of Premium to induce Assignee to purchase—Who may set up Usury.—A mortgage free from usury in the hands of the mortgagee, is not rendered usurious by the payment of a premium to the assignee to induce him to purchase it: *Conover* v. *Hobart*, 9 C. E. Green.

But even if the mortgage were usurious, the purchaser of the mortgaged premises who has taken a conveyance from the mortgagor expressly subject thereto, cannot set up usury as a defence to a suit on the mortgage: *Id.*

The purchaser of a mere equity of redemption in premises covered by a usurious mortgage, who buys subject to the lien of such mortgage, cannot set up usury as a defence to the encumbrance: *Id.*

NEGLIGENCE.

Damages—Buildings in Cities—Care in Construction of Chimneys, Furnaces, etc.—Action for the destruction by fire of the plaintiff's factory building, caused by sparks from the brewery of defendant. The grounds on which a recovery was claimed were, first, that the flues, chimneys, and furnaces in defendant's brewery, being near to plaintiff's factory building, were not built in proper shape, or of sufficient height or capacity, thereby causing burning coals, soot, cinders, sparks, and embers to be carried therefrom upon the roof of the factory, whereby it was burned and destroyed; and, second, that defendant was negligent in the use of the furnaces, flues, and chimneys, by making large fires therein, of highly inflammable and dangerous material, so that the sparks, embers, etc., passed from the chimney to the roof of the factory, burning and destroying it: *Gagg* v. *Vetter*, 41 Ind.

The defendant's brewery was built in a populous part of a large and rapidly increasing city. The property of the plaintiff, which was destroyed by the fire, was there at the time the brewery was constructed: *Held*, that this imposed upon the defendant the necessity of exercising a higher degree of care and diligence in the construction and management of his brewery than if it had been located in the country, or in a part of the city where there were no houses in its immediate vicinity; that a mere difference of opinion among men of science and experience, as to the best plan to construct the chimney, furnace, and flues, did not justify the selection of any well supported theory without further inquiry; for the defendant was bound to use all due care and

vigilance to ascertain which theory was correct, and which incorrect; and for that purpose he was bound to avail himself of all the discoveries which science and experience had put within his reach; that while the law does not require absolute scientific perfection in the construction of such works, it does require the exercise of a high degree of care and skill to ascertain, as nearly as may be, the best plan for such structures; and it requires that not only skilful and experienced workmen shall be employed in their construction, but that due skill shall be exercised by such workmen in the particular instance; that the defendant was liable in damages to the extent of the injury sustained by the plaintiff, if it was proved upon the trial, either that ordinary care and diligence were not employed in the construction of the chimney, furnaces, and flues, or that he was guilty of negligence in the management thereof, and that the factory building was destroyed from either of these causes: *Id.*

The question of negligence is one of mingled law and fact, to be decided as a question of law by the court, when the facts are undisputed or conclusively proved, but not to be withdrawn from the jury when the facts are disputed and the evidence is conflicting: *Id.*

It was proper for the court, in said action, to admit evidence to prove that smoke, sparks, and flame had been seen coming out of the top of the chimney at other times than on the occasion of the injury complained of, and to instruct the jury that it was proper for them to consider and weigh such evidence, in determining whether the chimney and smoke-stack had been properly constructed: *Id.*

NUISANCE.

Nuisance to Dwelling-houses—Injunction—Smoke from a Factory—Offensive Odors—Noxious Vapors.—A court of equity will interpose by injunction to restrain an existing or threatened nuisance to a dwelling-house, if the injury be shown to be of such a character as to diminish materially the value of the property as a dwelling, and seriously interfere with the ordinary comfort and enjoyment of it; and if it appear to be a case where subtantial damages could be recovered at law: *Adams* v. *Michael*, 38 Md.

If a party erect a manufacturing establishment in immediate proximity to the dwellings of his neighbors, and in its operation large volumes of smoke, offensive odors and noxious vapors are emitted, thereby materially interfering with the comfort of the occupants of the dwellings, a court of equity will interpose by injunction to restrain the continuance of the nuisance: *Id.*

The appellants filed their bill for an injunction to restrain the appellee from erecting a factory for the manufacture of felt roofing, in the immediate vicinity of certain valuable dwelling-houses, the property of the complainants, which factory, if allowed to be erected and put into operation, would, it was charged, become a nuisance specially injurious to the complainants. The bill alleged that owing to the dirt, odor, smoke and appurtenances of the factory, together with the inflammable nature of the material used in the manufacture of felt roofing, the property of the complainants would be utterly destroyed as dwellings, and, that one of the complainants would be deprived of the comforts of his home, and the health of his family would be impaired by the nuisance. The bill further alleged that the irreparable and continuing injury to the complainant's property, and the value thereof, and to their just enjoy-

ment of the same, would result from the erection and carrying on of the said manufacturing business. *Held:* That the allegations of the bill were not sufficiently specific and definite as to the facts and circumstances from which the court alone could determine whether the nuisance would be of the nature and character supposed—the simple allegation that particular consequences would follow the erection of the factory, was not sufficient; facts should have been stated so that the court could see and determine whether the factory when erected, would or would not constitute a nuisance such as would sensibly and materially diminish the value of the complainants' property and the ordinary comfort and enjoyment of it. That the bill thus failing to disclose all the facts essential to enable the court to form an opinion as to the propriety of granting an injunction, the application must be refused, but without prejudice to any new application the complainants might think themselves entitled to make: *Id.*

Partition.

Denial of Plaintiff's title—Equity will not try Questions which can be settled at Law.—In a suit for partition, a court of equity will not try the question of illegitimacy on which the complainant's title is alleged to depend, nor direct an issue to be framed that it may be tried at law: *Riverview Cemetery Company* v. *Turner*, 9 C. E. Green.

If in a suit for partition, the complainant's title is denied, and the title which is disputed is a legal one, the court may dismiss the bill, or it may *ex gratia* retain the cause to afford the complainant an opportunity to settle his title at law. It will not do more: *Id.*

Railroad.

Injury to Animals.—To render a railroad liable, under the statute, for animals killed or injured by its cars, locomotives, or other carriages, there must be actual collision of the cars, locomotives, or other carriages with such animals: *O. & M. Railway Co.* v. *Cole*, 41 Ind.

A railroad company is not liable, under the statute, for an injury to an animal, where a train caused the animal to take fright, and the injury was the result of the fright. Thns, the company is not liable, where a colt, frightened by a train, ran from an adjoining field upon the railroad track, which was not properly fenced, and there broke its leg between the bars of a cow-pit: *Id.*

Sale. See *Execution*.

Sheriff.

Poundage.—An attorney issuing an execution, is liable to the sheriff for his poundage thereon: *Campbell* v. *Collison*, 65 Barb.

But when a judgment has been reduced in amount by the court on appeal, even after levy made upon an execution issued on it, the sheriff is entitled to his fees or poundage only on the amount to which the judgment has been reduced; where he has been notified of such reduction, and has collected only the reduced amount: *Id.*

Sheriff's Sale.

Inadequacy of Price—Mistake of Owner—Interference of Equity to set aside.—A sheriff's sale will be set aside where there is gross inadequacy of price, and the party whose interest is injuriously affected by

the sale has been prevented by mistake or misapprehension from attending it: *Metzler* v. *Shaumann*, 9 C. E. Green.

When property is sold under the process of this court for a grossly inadequate price, the court will not permit one who, however, innocently and unintentionally contributes to the mistake of the owner, by which he is misled as to the time of sale, to take advantage of the mistake by a voluntary purchase of the property at the sale: *Id.*

SURETY.

Obligation of a Creditor to preserve the Securities held by him for a Debt, for the benefit of the Surety—Debtor and Creditor—Conduct by a Creditor in relation to the Securities he holds for the Debt, that does not discharge the Surety.—A surety, upon satisfying the debt for which he is bound, is entitled to the benefit of all securities, either of a legal or an equitable nature, which the creditor has, or could have enforced against the principal debtor and those claiming under him. The creditor is bound to preserve all such securities for the benefit and protection of the surety; and if he parts with any of them, or if the benefit of them be lost by his act, the surety will be exonerated to the extent to which he is prejudiced by the act of the creditor. And this right of the surety is the same, although he may not have known of the existence of the securities held by the creditor, or though taken subsequently to the date of the contract of suretyship: *Freaner* v. *Yingling*, 38 Md.

A creditor cannot be compelled to resort in the first instance to the principal debtor, or to the securities which he holds for the debt, before proceeding against the surety; nor is there any positive duty incumbent on the creditor to prosecute measures of active diligence; mere delay on his part, in the absence of some special equity, unaccompanied by any valid contract for such delay, will not amount to laches, so as to discharge the surety: *Id.*

TRESPASS.

Wilful damage to Property—Injury to third persons thereby—If one commits a wilful and malicious trespass upon the property of another, under circumstances involving unavoidable injury to persons and property, he is responsible to any person injured by such trespass. It is not necessary that he should intend to do the particular injury which ensues: *Munger* v. *Baker*, 65 Barb.

The defendant, secretly, and with the wanton and malicious purpose to injure and destroy the property of a railroad company, and obstruct the running of trains upon its road, pulled out and threw away the pins used in coupling together the cars of a train, whereby the cars were uncoupled, and the plaintiff, an employee of the company, was injured. *Held*, That such act being unlawful and obviously designed for mischief, and involving naturally, if not necessarily, just such consequences as did ensue, the defendant was liable to the plaintiff for the injuries sustained by him: *Id.*

Injunction to restrain—Adverse Possession by Fence-line—In a suit for an injunction by one of two adjacent landowners to restrain the other from erecting a building on lands of the former, the complainant is entitled to the benefit of an actual location by fence erected more than twenty-five years since, and up to which he and those under whom

he claims, have been in continued possession during all that time: *Southmayd et al.* v. *McLaughlin*, 9 C. E. Green.

In such case, the defendant who had completed excavations on complainant's land, will be restrained from further trespass until he shall have established his right at law: *Id.*

Trustee.

Purchase at his own Sale—Presumption of Fraud—Lapse of Time.—Upon principles of public policy, trustees are not allowed to purchase the trust property from the *cestuis que trust*, or acquire rights therein which may bring their personal interests in conflict with their official duties: *Pairo* v. *Vickery*, 38 Md.

While transactions between trustees and *cestuis que trust* are not void, they are discountenanced by Courts of Equity; the presumption is against their validity; and they are never upheld unless it clearly appear that they are free from all taint of unfairness. The *onus* of showing their perfect *bona fides* is upon the trustee: *Id.*

Lapse of time, where it has been long and is unexplained, and death of parties, are sometimes ground for refusing relief, especially where in the mean time, other parties have acquired rights, or there are other circumstances from which the court can see that injustice might be done by interference; but in questions of this kind each case must depend upon its own circumstances: *Id.*

Usury. See *Mortgage.*

Vendor and Purchaser.

False Representations—Duty of Purchaser.—A representation, made by a vendor, respecting the property sold, may relieve the purchaser from the use of that care, caution and observation that he would be bound to exercise if no representation were made: *Vandewalker* v. *Osmer*, 65 Barb.

While it is true that a purchaser may, by relying on the representations of the vendor, be misled, and omit to make that careful examination of the property that a prudent man would and should make, yet a jury should require the clearest proof that the purchaser was induced by the representation, to omit to examine the property: *Id.*

It will not do to permit a vendee, having the property before him and defects in it plainly discoverable, to shut his eyes and ears, and omit to use his senses, and pretend that he relied on the representations, and was thereby misled: *Id.*

In cases of *warranty*, an obvious defect is not cured by the warranty; because the law requires the purchaser to examine the property with that degree of care and skill that men generally are capable of exercising, in respect to property they are proposing to purchase. The same principle should apply in cases of false representation. If the property is not present, the purchaser may rely on the representation, but if the property is present, and nothing is said or done by the vendor to induce the purchaser not to examine it, and the falsity of the representation is palpable to the senses, the purchaser cannot be permitted to omit examination, and justify his omission by the representation: *Id.*

Voluntary Payment. See *Action.*